

TITLE 329 SOLID WASTE MANAGEMENT DIVISION

Rule Information Sheet

Definition of Solid Waste for Hazardous Waste Management LSA Document #20-23

Overview

This rulemaking amends 329 IAC 3.1-5 and 329 IAC 3.1-6 to update the identification of solid waste for the purposes of hazardous waste management to be consistent with the analogous federal requirements in 40 CFR 260 and 40 CFR 261. The proposed amendments will address certain provisions of the federal definition of solid waste affected by a vacatur ordered by the U.S. Court of Appeals for the D.C. Circuit on July 7, 2017, and the subsequent U.S. Environmental Protection Agency (U.S. EPA) final rule published on May 30, 2018. No additional amendments beyond the incorporation by reference of federal requirements are proposed in this rulemaking.

The Indiana Department of Environmental Management (IDEM) previously adopted the 2015 U.S. EPA final rule that updated the federal definition of solid waste. However, the 2017 federal court vacatur simultaneously voided the 2015 definition of solid waste requirements in Indiana's rules due to a statutory provision at IC 13-14-9-8(h). As a result, the affected portions of Indiana's rules were no longer enforceable and did not include the exclusion to the definition of solid waste at 40 CFR 261.4(a)(24) and the changes to the legitimate recycling requirements at 40 CFR 260.43. IDEM is proposing to incorporate by reference the changes in the May 30, 2018, U.S. EPA final rule to be consistent with the latest updates to the federal definition of solid waste for the purposes of hazardous waste management.

In the Second Notice of Comment Period, the draft rule included the addition of state-specific requirements at 329 IAC 3.1-6-2(15) and 329 IAC 3.1-6-10 for the hazardous secondary materials transfer-based exclusion at 40 CFR 261.4(a)(24). IDEM has removed these state-specific requirements from the draft rule for preliminary adoption after the enactment of Public Law 120-2022 during the 2022 session of the Indiana General Assembly. The statutory amendments at IC 13-19-3-1(b) restrict IDEM's flexibility for state-specific additions to the federal exclusion at 40 CFR 261.4(a)(24). As a result, IDEM will only incorporate by reference the federal requirements without state-specific additions.

Affected Persons

This rulemaking primarily affects persons and entities involved in the management of hazardous secondary materials that pursue the transfer-based exclusion at 40 CFR 261.4(a)(24). Those affected may include hazardous secondary material generators, transporters of the materials, intermediate facilities, reclamation facilities, and communities where the facilities are located.

Reasons for the Rule

The main reason for this rulemaking is to amend Indiana's hazardous waste rules to include the

recent updates to federal definition of solid waste for the purposes of hazardous waste management and resolve gaps created in Indiana's rules by the federal court vacatur. Adopting these updates will make Indiana's rules consistent with the federal definition of solid waste that was revised in the 2018 U.S. EPA final rule. The transfer-based exclusion at 40 CFR 261.4(a)(24) will be made available to affected entities in Indiana and IDEM's legitimate recycling requirements will be consistent with the federal requirements at 40 CFR 260.43.

Another purpose of this rulemaking is to comply with the requirements for an authorized state hazardous waste program. Because IDEM administers an authorized state hazardous waste program with the approval of the U.S. EPA, IDEM must adopt state hazardous waste rules that are no less stringent than the federal rules. In some situations, IDEM will adopt federal rules that are less stringent than existing state rules to maintain consistency with the federal rules and offer available compliance alternatives or opportunities for cost savings. The proposed rule includes federal hazardous waste rules that are less stringent than Indiana's existing rules on the subject matter and offer an additional exclusion from the definition of solid waste. After adoption of the proposed rule, Indiana's authorized hazardous waste program will be consistent with the federal requirements for the identification of solid waste for the purposes of hazardous waste management.

Economic Impact of the Rule

By adopting the federal updates to the identification of solid waste for the purposes of hazardous waste management, this proposed rule will primarily offer potential cost savings to regulated entities that meet the exclusion at 40 CFR 261.4(a)(24). Meeting the conditions of the exclusion will allow a regulated entity to manage the secondary hazardous materials without applying for a hazardous waste facility permit, which ranges in cost from \$23,800 to \$40,600 for a new permit. Maintaining compliance with the exclusion also does not require a permit renewal, which ranges in cost from \$29,660 to \$58,600. In addition, a regulated entity that meets the exclusion will have lower annual operating fees and compliance costs than a facility with a hazardous waste facility permit. For example, a facility operating under the exclusion will not be subject to the annual permit operation fees, which range from \$1,500 to \$50,000.

Scheduled Board Action and Hearings

First Public Hearing: November 9, 2022, at 1:30 p.m., at the Indiana Government Center South, 10 North Senate Avenue, Conference Room A, Indianapolis, Indiana.

Second Public Hearing: To be scheduled.

IDEM Contact

Additional information regarding this rulemaking action can be obtained from Dan Watts, Rules Development Section, Office of Legal Counsel, at dwatts1@idem.in.gov, (317) 234-5345, or (800) 451-6027 (in Indiana).